

REMARKS

Claims 1-3 are currently pending in the matter of the present application. In an Office Action having a mailing date of October 5, 2004, the Examiner rejected Claims 1-3. This amendment and response addresses the Examiner's rejections.

Claims 2 and 3 have been amended for clarification of the claimed subject matter.

In the Office Action, the Examiner rejected Claim 1 under 35 U.S.C. §112, second paragraph for being indefinite because of the word "noise" before the word "threshold." The Applicant has deleted the word "noise." Accordingly, the Examiner is requested to withdraw the 35 U.S.C. §112 rejection of Claim 1.

The Examiner also rejected Claims 1-3 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,999,047 to Green (hereinafter referred to as "Green"). It is well recognized that claims are anticipated if, and only if, each and every element, as set forth in the claim is found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the...claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). See MPEP §2131.

The Applicants respectfully traverse the Examiner's 35 U.S.C. §102(b) rejection of Claims 1-3. Green fails to disclose a number of elements of Claims 1-3, each of which provide an independent basis for the withdrawal of the rejection under 35 U.S.C. §102(b). Green generally describes a method and apparatus utilizing color algebra for analyzing scene regions, such as for analysis of blood cells. In the method, first and second scanned signals are produced

to generate a differential contrast between two regions in a sample. The signals are combined algebraically with thresholding to classify the sample region into one of a number of categories. In contrast, the method of the present invention is for analyzing a sample to detect particles. In the method, threshold values for the detection of particles are set. Thus, Green does not disclose the use of thresholding to improve the detection of particles in a sample, as claimed. Rather, Green uses thresholding for the different purpose of classifying a sample region into one of a number of categories. Therefore, Green does not anticipate Claims 1-3. Accordingly, the Examiner is requested to withdraw the rejection under 35 U.S.C. § 102(b).

In addition, in making the rejection, the Examiner stated that “[i]t follows that field 14 disclosed in Green is analogous to the ‘capillary’ recited in the claim. . . This ‘capillary array’ is shown in Figure 1 of the applicant’s specification, and should be compared to element 14 in Figure 3 of the Green disclosure.” The Applicant respectfully disagrees. Green at col. 8, ll. 53-61, as cited by the Examiner, discloses “[t]he sample . . . spread on a monolayer 18 on a standard glass slide 20.” Thus, the process in Green is a two dimensional scan only that provides no information on depth (and therefore volume). As a consequence, the process in Green can not provide absolute cell counts (i.e., cells/volume of blood). In contrast, each of Claims 1-3 of the present application state “(a) scanning the fixed volume capillary. . .” Since the step of scanning a fixed volume capillary is not disclosed by Green, Claims 1-3 are not anticipated by Green. Accordingly, for this reason, the Examiner should withdraw the 35 U.S.C. §102(b) rejection of Claims 1-3.

Application Serial No. 10/771,585
Amendment and Response April 5, 2005
Reply to Office Action of October 5, 2004

Based upon the foregoing, the Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,
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Date: April 5, 2005